

1-1 By: Hughes S.B. No. 1945
1-2 (In the Senate - Filed March 10, 2017; March 27, 2017, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 26, 2017, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 26, 2017,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>Huffman</u>	X		
1-10	<u>Hughes</u>	X		
1-11	<u>Birdwell</u>	X		
1-12	<u>Creighton</u>	X		
1-13	<u>Estes</u>	X		
1-14	<u>Lucio</u>	X		
1-15	<u>Nelson</u>	X		
1-16	<u>Schwertner</u>	X		
1-17	<u>Zaffirini</u>	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1945 By: Zaffirini

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the Texas Uniform Trade Secrets Act.
1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-23 SECTION 1. Section 134A.002, Civil Practice and Remedies
1-24 Code, is amended by adding Subdivisions (1-a), (3-a), and (7) and
1-25 amending Subdivisions (3), (4), and (6) to read as follows:
1-26 (1-a) "Clear and convincing" means the measure or
1-27 degree of proof that will produce in the mind of the trier of fact a
1-28 firm belief or conviction as to the truth of the allegations sought
1-29 to be established.
1-30 (3) "Misappropriation" means:
1-31 (A) acquisition of a trade secret of another by a
1-32 person who knows or has reason to know that the trade secret was
1-33 acquired by improper means; or
1-34 (B) disclosure or use of a trade secret of
1-35 another without express or implied consent by a person who:
1-36 (i) used improper means to acquire
1-37 knowledge of the trade secret;
1-38 (ii) at the time of disclosure or use, knew
1-39 or had reason to know that the person's knowledge of the trade
1-40 secret was:
1-41 (a) derived from or through a person
1-42 who used ~~had utilized~~ improper means to acquire the trade secret
1-43 ~~[it]~~;
1-44 (b) acquired under circumstances
1-45 giving rise to a duty to maintain the [its] secrecy of or limit the
1-46 [its] use of the trade secret; or
1-47 (c) derived from or through a person
1-48 who owed a duty to the person seeking relief to maintain the [its]
1-49 secrecy of or limit the [its] use of the trade secret; or
1-50 (iii) before a material change of the
1-51 position of the person ~~[person's position]~~, knew or had reason to
1-52 know that the trade secret [it] was a trade secret and that
1-53 knowledge of the trade secret [it] had been acquired by accident or
1-54 mistake.
1-55 (3-a) "Owner" means, with respect to a trade secret,
1-56 the person or entity in whom or in which rightful, legal, or
1-57 equitable title to, or the right to enforce rights in, the trade
1-58 secret is reposed.
1-59 (4) "Proper means" means discovery by independent
1-60 development, reverse engineering unless prohibited, or any other

2-1 means that is not improper means.

2-2 (6) "Trade secret" means all forms and types of

2-3 information, including business, scientific, technical, economic,

2-4 or engineering information, and any [a] formula, design, prototype,

2-5 pattern, plan, compilation, program device, program, code, device,

2-6 method, technique, process, procedure, financial data, or list of

2-7 actual or potential customers or suppliers, whether tangible or

2-8 intangible and whether or how stored, compiled, or memorialized

2-9 physically, electronically, graphically, photographically, or in

2-10 writing if [that]:

2-11 (A) the owner of the trade secret has taken

2-12 reasonable measures under the circumstances to keep the information

2-13 secret; and

2-14 (B) the information derives independent economic

2-15 value, actual or potential, from not being generally known to, and

2-16 not being readily ascertainable through [by] proper means by,

2-17 another person [other persons] who can obtain economic value from

2-18 the [its] disclosure or use of the information [, and

2-19 [(B) is the subject of efforts that are

2-20 reasonable under the circumstances to maintain its secrecy].

2-21 (7) "Willful and malicious misappropriation" means

2-22 intentional misappropriation resulting from the conscious

2-23 disregard of the rights of the owner of the trade secret.

2-24 SECTION 2. Section 134A.003, Civil Practice and Remedies

2-25 Code, is amended by amending Subsection (a) and adding Subsection

2-26 (a-1) to read as follows:

2-27 (a) Actual or threatened misappropriation may be enjoined

2-28 if the order does not prohibit a person from using general

2-29 knowledge, skill, and experience that person acquired during

2-30 employment.

2-31 (a-1) On application to the court, an injunction shall be

2-32 terminated when the trade secret has ceased to exist, but the

2-33 injunction may be continued for an additional reasonable period of

2-34 time in order to eliminate commercial advantage that otherwise

2-35 would be derived from the misappropriation.

2-36 SECTION 3. Section 134A.004(b), Civil Practice and Remedies

2-37 Code, is amended to read as follows:

2-38 (b) If willful [wilful] and malicious misappropriation is

2-39 proven by clear and convincing evidence, the fact finder may award

2-40 exemplary damages in an amount not exceeding twice any award made

2-41 under Subsection (a).

2-42 SECTION 4. Section 134A.005, Civil Practice and Remedies

2-43 Code, is amended to read as follows:

2-44 Sec. 134A.005. ATTORNEY'S FEES. The court may award

2-45 reasonable attorney's fees to the prevailing party if:

2-46 (1) a claim of misappropriation is made in bad faith;

2-47 (2) a motion to terminate an injunction is made or

2-48 resisted in bad faith; or

2-49 (3) willful [wilful] and malicious misappropriation

2-50 exists.

2-51 SECTION 5. Section 134A.006, Civil Practice and Remedies

2-52 Code, is amended to read as follows:

2-53 Sec. 134A.006. PRESERVATION OF SECRECY. (a) In an action

2-54 under this chapter, a court shall preserve the secrecy of an alleged

2-55 trade secret by reasonable means. There is a presumption in favor

2-56 of granting protective orders to preserve the secrecy of trade

2-57 secrets. Protective orders may include provisions limiting access

2-58 to confidential information to only the attorneys and their

2-59 experts, holding in camera hearings, sealing the records of the

2-60 action, and ordering any person involved in the litigation not to

2-61 disclose an alleged trade secret without prior court approval.

2-62 (b) In an action under this chapter, a presumption exists

2-63 that a party is allowed to participate and assist counsel in the

2-64 presentation of the party's case. At any stage of the action, the

2-65 court may exclude a party and the party's representative or limit a

2-66 party's access to the alleged trade secret of another party if other

2-67 countervailing interests overcome the presumption. In making this

2-68 determination, the court must conduct a balancing test that

2-69 considers:

- 3-1 (1) the value of an owner's alleged trade secret;
- 3-2 (2) the degree of competitive harm an owner would
- 3-3 suffer from the dissemination of the owner's alleged trade secret
- 3-4 to the other party;
- 3-5 (3) whether the owner is alleging that the other party
- 3-6 is already in possession of the alleged trade secret;
- 3-7 (4) whether a party's representative acts as a
- 3-8 competitive decision maker;
- 3-9 (5) the degree to which a party's defense would be
- 3-10 impaired by limiting that party's access to the alleged trade
- 3-11 secret;
- 3-12 (6) whether a party or a party's representative
- 3-13 possesses specialized expertise that would not be available to a
- 3-14 party's outside expert; and
- 3-15 (7) the stage of the action.

3-16 SECTION 6. Chapter 134A, Civil Practice and Remedies Code,
 3-17 as amended by this Act, applies only to an action that commences on
 3-18 or after the effective date of this Act. An action that commences
 3-19 before the effective date of this Act is governed by the law
 3-20 applicable to the action immediately before the effective date of
 3-21 this Act, and that law is continued in effect for that purpose.

3-22 SECTION 7. This Act takes effect September 1, 2017.

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